IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 4-5-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition Nos.9235 of 2006
W.P.M.P.No.10214, 10215 of 2006

Senthil College of Education,
Established by M/s.Senthil Education Society,
rep.by its Secretary,
No.36, Thiyaga Raja Street,
Pondicherry - 605 001. ... Petitioner

Vs.

1. The Vice-Chancellor,
Pondicherry University,
Kalapet,
Pondicherry - 605 014.

2. The Register,
Pondicherry University,
Kalapet,
Pondicherry - 605 014.

3. Regional Director,
National Council for Teacher Education,
Southern Regional Committee,
1st Floor, CSD Buildings, HMT Post,
Bangalore - 560 003. ... Respondents

This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus directing the second respondent to grant affiliation to the petitioner College for the academic year 2005-2006 for B.Ed. Course of study by causing necessary inspection within a time frame to be fixed by this Court.

For Petitioner : Mr.K.Chandru, Sr. Counsel
for Mr.J.Saravanakumar

For Respondents 1&2 : Mrs.A.V.Bharathi

For 3rd Respondent : Mr.S.Udayakumar, SCGSC

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O R D E R

By consent of both sides, the writ petition itself is taken up for final disposal.

2. Prayer in the writ petition is to issue a writ of mandamus directing the second respondent to grant affiliation to the petitioner College for the academic year 2005-2006 for B.Ed Course by causing necessary inspection within a time frame to be fixed by this Court.

3. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner/Management under the name and style of 'Senthil College of Education' applied for recognition to B.Ed Course to the third respondent, who is the competent authority, from the academic year 2005-2006 and also for affiliation to the second respondent University in August, 2004. The second respondent University by letter dated 8.11.2004 while acknowledging the receipt of application for affiliation indicated that the application shall be in the designed format to be submitted on or before 15.12.2004 to enable the University to consider the application for affiliation for the academic year 2005-2006. There was a condition stipulated in the said communication of the University that 'No Objection Certificate' from the State Government and recognition from the NCTE should be produced well in time, at least three months prior to the academic year, to consider the application. The Management complied with the said conditions and submitted the application in the prescribed format on 14.12.2004, within the time stipulated. The second respondent by letter dated 31.3.2005 required certain other particulars and the same were also furnished.

(b) It is stated in the affidavit that under the scheme of the NCTE Act, when the third respondent is considering for grant of recognition, the staff list required to be approved by the second respondent and the second respondent shall also be intimated prior to the inspection caused by the third respondent in terms of the communication dated 17.3.2005. Petitioner/Management by letters dated 11.4.2005 and 14.4.2005 requested the second respondent to give approval of staff list. The second respondent, instead of granting approval of the staff list, sent a reply stating that the said request of the Petitioner/Management is not feasible for consideration, which could be made only after the grant of recognition. According to the petitioner the said conduct of the second respondent is totally a non-co-ordinated act.

(c) The third respondent by letter dated 10.11.2005 recommended for grant of recognition and an order granting recognition was

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communicated to the second respondent by the third respondent on 18.11.2005 and the Management was issued with the recognition order dated 28.11.2005. According to the petitioner, immediately after the receipt of recognition order, petitioner made a representation to the second respondent and prayed for affiliation on 1.12.2005 itself, followed by further reminders on 28.12.2005 and 30.1.2006. The first respondent was informed of the inaction on the part of the second respondent and remarks were called from the second respondent by the first respondent. According to the affidavit, second respondent expressed certain difficulties and till date the second respondent failed to consider the application for recognition and consider the request for grant of affiliation for B.Ed course for the academic year 2005-2006.

(d) It is further stated in the affidavit that even though the third respondent granted recognition as stated supra, the Government of Pondicherry, by taking note of the grant of recognition order passed by the third respondent, belatedly permitted the institution to fill up the Government quota seats from the merit list based on common entrance test and it was also informed that if seats remain unfilled even after exhausting the said merit list based on CET/CENTAC, the colleges may invite applications through open advertisement and prepare the inter se merit of the candidates. The vacant seats shall be filled up on the basis of their merit list as per the notification issued in G.O.Ms.No.21 dated 16.2.2006. According to the Petitioner/Management, they provisionally filled up 50% seats after the recognition order dated 28.11.2005 and the remaining 50% of seats to be filled up from the candidates selected by the Government on the basis of the affiliation to be granted by the second respondent.

(e) According to the petitioner, the second respondent is dealing the application of the petitioner for affiliation in an arbitrary manner and there is no basis or reason available to the second respondent for refusing consideration of the affiliation even in terms of its communication dated 13.7.2005. In the affidavit it is stated that the following institutions were granted recognition in the following dates and granted affiliation without any undue delay.

(i) Vivekananda College of Education, Pondicherry, granted recognition by NCTE on 12.8.2005, was granted affiliation on 3.11.2005.

(ii) Vasavi College of Education, Madagadipet, Pondicherry, granted recognition by NCTE on 12.10.2005 was granted affiliation on 8.12.2005.

(iii)Nehru College of Education, Sedarapet, Pondicherry, granted recognition on 4.8.2005 was granted affiliation on 12.12.2005.

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(iv) Co-operative College of Education, granted recognition on 9.8.2005 was granted affiliation on 22.12.2005.

According to the petitioner, 12 similar institutions were also granted affiliation after the grant of recognition by the NCTE upto the end of December, 2005, and as such there is no reason for non-consideration of the application of the petitioner Management by the second respondent and it is a statutory duty cast upon the second respondent to act within the time frame to validate the recognition granted by the third respondent and due to the inaction, the second respondent is attempting to invalidate the order of the competent authority namely the third respondent for no fault of the petitioner Management. Under these circumstances the above writ petition is filed with the above prayer.

3. Respondents 1 and 2 have filed counter affidavit. The only objection raised by the respondents are that no objection certificate from the Government and the recognition order from the NCTE should be submitted well in time or at least three months before the commencement of the academic year as intimated by the communication dated 8.11.2004, so that the University can comply with the formalities such as constitution of Inspection Committee, conducting of inspection, obtaining report on the compliance of the deficiencies, if any pointed out by the Inspection committee, creation of endowment fund, remittance of affiliation fund, etc. It is also stated in the counter affidavit that the entire process would normally take about two to three months. It is also stated that so far as academic year 2005-2006 is concerned, a peculiar circumstance prevailed in respect of B.Ed colleges, because a large number of B.Ed colleges numbering 29 were issued No Objection certificate by the Government of Pondicherry on 30.1.2004 and all these colleges sought affiliation from the University for the academic year 2005-2006. According to the second respondent, despite the communication from the University that it will not be possible to grant affiliation unless they produce NCTE recognition in time, many of the colleges submitted the required NCTE recognition very late and all the colleges which were granted NCTE recognition upto September, 2005, were considered for affiliation for the academic year 2005-2006 and for these colleges separate examination has been scheduled in the month of November, 2006 to enable completion of the requisite term days. No college which was granted recognition by NCTE after September, 2005, was granted affiliation by the University for the academic year 2005-2006. It is further stated in the counter affidavit that NOC was obtained from the Government of Pondicherry for B.Ed course on 30.1.2004 and the application form for grant of affiliation was submitted on 14.12.2004 without enclosing the recognition order. The recognition order was forwarded to the second respondent on 1.12.2005 by the Petitioner/Management. It is also averred in the counter affidavit that no College submitted

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recognition order after November, 2005, has been granted affiliation by the respondent University for the year 2005-2006. Therefore the alleged discrimination as stated in the affidavit is denied.

4. A reply affidavit is filed by the petitioner wherein it is stated that the grant of affiliation to 12 institutions similarly placed was not denied specifically and the contention raised to the effect that 2 to 3 months time is required for compliance of formalities is totally wrong in view of the fact that Loyola education Animation & Social Trust was granted affiliation within 18 days of inspection and within 1½ months from the date of recognition. Similarly, one Venkateswara Training Institute of Vetri Coaching Centre was granted recognition within 32 days of inspection and 56 days from the date of recognition.

5. An additional typed set of papers is filed along with the reply affidavit on 26.4.2006, wherein the order passed by this Court in W.P.No.40522 of 2005 dated 18.1.2006 is enclosed in which a direction was issued to the second respondent herein to consider the application seeking affiliation on the basis of the Inspection to be conducted by its committee and pass orders within four weeks from 25.1.2006. The said direction issued in the order dated 18.1.2006 of this Court was complied with by conducting inspection immediately and affiliation was also granted to the said college by order dated 20.3.2006 for the academic year 2005-2006. In the said affiliation order it is stated that compliance report shall be submitted within one month to verify the compliance of the conditions of affiliation. The said order of affiliation dated 20.3.2006 also finds a place in the additional typed set.

6. The learned Senior Counsel appearing for the petitioner submitted that the above said affiliation order dated 20.3.2006, granting time to comply with the affiliation condition is a proof of the indifferent attitude of the second respondent in not considering the application for affiliation of the petitioner on the technical plea of want of inspection and pass orders on the affiliation. The learned senior counsel pointed out that this Court granted four weeks time to conduct inspection on 18.1.2006, pursuant to which an inspection was conducted and affiliation was granted. Without even satisfying the affiliation condition, the said order having been complied with, there is no impediment in considering the application of the petitioner for affiliation, for which the petitioner submitted recognition order from the third respondent as early as on 1.12.2005. The learned Senior Counsel further argued that the recognition having been granted by the third respondent for the academic year 2005-2006, it is not open to the second respondent to deny affiliation if all other affiliation conditions are satisfied. It is further argued that the two authorities viz., the Pondicherry Government and the third respondent have granted no objection certificate and

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recognition respectively for the academic year 2005-2006 and even after that by not considering the affiliation application for the year 2005-2006, the second respondent is trying to nullify the said orders without any rhyme or reason. Learned Senior Counsel ultimately submitted that in the recognition order dated 28.11.2005, third respondent directed the petitioner College to get the approval of the eight exclusive faculty members and send a report. The learned Counsel appearing for the University submitted that no institution, which was granted recognition by the third respondent after September, 2005 was inspected and granted affiliation by the second respondent. The learned counsel cited the judgment of the Division Bench of this Court reported in 2005 (2) CTC 513 (Loordhu Ammal Educational Trust v. The University of Madras)(DB) to show that the grant of affiliation by the University is not automatic and the Institution must satisfy the affiliation condition, then only can seek for affiliation.

7. I have considered the rival submissions of the learned counsel for the petitioner as well as the learned counsels for the respective respondents. The point in issue is whether the second respondent can be directed to process the application of the petitioner for affiliation of B.Ed Course for the academic year 2005-2006.

8. Admittedly, petitioner B.Ed college has obtained 'No Objection Certificate' from the Government of Pondicherry and recognition from the third respondent for admitting 100 students in the B.Ed course for the academic year 2005-2006. It is not in dispute that affiliation application was also submitted before the second respondent before the cut-off date fixed by the second respondent. The only objection raised by the second respondent in the counter affidavit is that the petitioner got recognition order from the third respondent on 28.11.2005 and the same was produced before the second respondent only on 1.12.2005 and therefore there is no time to make inspection and process the application for affiliation by the second respondent. As per the counter affidavit the second respondent requires 2 to 3 months for causing inspection and process the application for affiliation of various B.Ed colleges.

9. As stated supra, the affiliation application was submitted before the second respondent in time and the recognition order dated 28.11.2005 was furnished to the second respondent as early as on 1.12.2005. The only requirement as contended by the counsel for the second respondent/University is minimum two months time to process the application by causing inspection. The said two months time is already over by January, 2006 itself and the three months period is over by the end of February, 2006. Therefore, now it is not open to the second respondent to contend that there is no time available to make inspection and pass orders in the affiliation application submitted by the Petitioner/Management.

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10. The contention of the learned Senior Counsel for the petitioner that the recognition having been granted by the third respondent for 2005-2006, unless affiliation is granted by the second respondent after satisfaction of the compliance of the conditions of affiliation, the grant of recognition will be rendered meaningless, is well founded. Sub-section 6 to Section 14 of the NCTE Act, 1993, contemplates that every examining body shall on receipt of the order of recognition under sub-section 4, grant affiliation to the institution. Section 14 of the Act enables the Institution to apply for recognition and after the inspection and satisfaction by the Regional Committee, recognition order is being issued and the same shall also be communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government. Hence it is not in dispute that the third respondent communicated the order of recognition to the second respondent for taking steps to grant affiliation.

11. The learned counsel for the second respondent is of course right in contending that the grant of affiliation is not automatic as held by the Division bench of this Court in the decision reported in 2003 (2) CTC 513 (Loordhu Ammal Educational Trust v. The University of Madras). The said proposition cannot be disputed by anyone including the petitioner herein. However, the second respondent is not right in contending that because of the lack of time, it is not sending inspection team to the petitioner B.Ed College and processing application for affiliation, cannot be justified in view of the grant of recognition by the third respondent under section 14 of the NCTE Act. This Court in the Judgment reported in 2005 WLR 257 (Madras Education and Research, Integrated Trust v. The Periyar University, rep. by its Registrar, etc., & another) considered a similar issue and held that the respective Universities are bound to consider each of the application submitted by the Institutions for the grant of affiliation without reference to prior permission from the State Government, of course, subject to compliance of conditions for grant of affiliation, which are not inconsistent with the provisions of either NCTE Act or the regulations made thereunder. This Court further directed to pass orders on the affiliation by order dated 25.11.2004 on or before 31.12.2004. In the said judgment this Court emphasised the need for planning and co-ordinated development of the technical education system throughout the country, promotion and quality of such education in relation to planned qualitative growth, regulation and proper maintenance of norms and standards of technical education system and for matters connected therewith. For that purpose only NCTE Act was enacted in exercise of powers under Entry 66 of List-1, Entry 25 of List-3 (concurrent list). The said judgment was affirmed by the Division Bench Judgment of this Court

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reported in 2005 (2) CTC 182 (Bharathidasan University v. Dhanalakshmi Srinivasan Educational and Charitable Trust)(DB). In paragraph 24 of the Judgment, the Division Bench held as under,

> ".... Though it is stated that function of granting affiliation is legislative in nature and the same cannot be abdicated to outside agency. In the instant case, a perusal of the impugned order discloses that the same came to be passed on the basis of resolution of the syndicate which in turn rely on the provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, ignoring the express provisions viz., Sections 14 (4), 14(6) of the NCTE Act."

12. Thus, it is manifestly clear that the second respondent is duty bound to consider the affiliation request of the petitioner, at least from 1.12.2005, i.e, the date on which the recognition order was furnished to the second respondent. As rightly contended by the learned Senior Counsel for the petitioner, following the said principle in mind only the learned Judge of this Court in W.P.No.40522 of 2005 dated 18.1.2006 directed the second respondent herein to consider the application of the petitioner in the above writ petition to make inspection and pass orders on the request of affiliation within a period of four weeks from 25.1.2006 and the said order was complied with by the second respondent by causing inspection and granted affiliation by order dated 20.3.2006 for the academic year 2005-2006, of course, on certain conditions to fulfill all the affiliation conditions within one month from the date of the order of affiliation. The facts in the said case is similar to the facts in this case.

13. Hence there is no impediment for the second respondent to conduct inspection and consider the grant of affiliation of the petitioner B.Ed College within four weeks. The prayer in the writ petition even though is for a mandamus to direct the second respondent to grant affiliation, the learned Senior Counsel for the petitioner at the time of arguments submitted that the said prayer can be moulded with a direction to consider the request for grant of affiliation for the petitioner College.

14. Consequently, a mandamus is issued to the second respondent to consider the request for grant of affiliation of the petitioner B.Ed College for the academic year 2005-2006 by making inspection and pass orders without reference to the alleged belated submission of recognition order from the third respondent on 1.12.2005. The second respondent is directed to make inspection and pass orders on or before 5.6.2006.

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The writ petition is ordered in the above terms. No costs. Connected WPMP Nos.10214 and 10215 of 2006 are closed.

vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Vice-Chancellor, Pondicherry University,
   Kalapet, Pondicherry - 605 014.

2. The Register, Pondicherry University,
   Kalapet, Pondicherry - 605 014.

3. The Regional Director, National Council for Teacher Education,
   Southern Regional Committee, 1st Floor, CSD Buildings, HMT Post,
   Bangalore - 560 003.

+ one cc to Mr.A.V.Bharathi, Advocate Sr.No.23191.
+ one cc to Mr.J.Saravanakumar, Advocate Sr.No.23184.
+ one cc to Government Pleader, Sr.No.23185.

TEJ (CO)
RSM/4.5.2006

W.P.No.9235 of 2006

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